

Supreme Court, U. S.

FILED

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MICHAEL RODAN, JR., CLERK

APPENDIX

**In the
Supreme Court of the United States**

OCTOBER TERM, 1976

No. 76-1172

**THE FIRST NATIONAL BANK OF BOSTON,
NEW ENGLAND MERCHANTS NATIONAL BANK,
THE GILLETTE COMPANY,
DIGITAL EQUIPMENT CORPORATION,**

and

**WYMAN-GORDON COMPANY,
APPELLANTS,**

v.

**FRANCIS X. BELLOTTI, ATTORNEY GENERAL,
APPELLEE.**

**APPEAL FROM THE SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS**

**JURISDICTIONAL STATEMENT DOCKETED FEBRUARY 24, 1977
JURISDICTION POSTPONED APRIL 18, 1977**

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COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH
DOCKET ENTRIES

1976

1. Apr. 9 Complaint for declaratory judgment filed.
2. Apr. 9 Order of notice issued returnable on Wednesday, April 14th at 9:30 A.M. Full Court Room.
3. Apr. 12 Order of notice returned with service endorsed thereon.
4. Apr. 14 Appearance of Thomas R. Kiley, Asst. Attorney General, 1 Ashburton Place, Boston, Mass., for the defendant, filed.
5. Apr. 14 Order for completion of pleadings, as on file.
6. Apr. 21 Answer of the Attorney General filed.
7. Apr. 21 Suggested schedule filed.
8. Apr. 26 Statement of Agreed Facts filed.
9. Apr. 26 Reservation and report, as on file.
(Wilkins, J.)
10. Apr. 28 Notice of assembly of record on appeal sent to Francis H. Fox, Esq., attorney for the plaintiff and to Thomas R. Kiley, Asst. Attorney General, attorney for the defendant, by a letter dated and mailed this day.
11. Apr. 30 Motion to Intervene of Coalition for Tax Reform Inc., and United Peoples, Inc., filed.
(Allowed 5/11/76)
12. Apr. 30 Answer of intervening defendants Coalition For Tax Reform, Inc., and United Peoples, Inc. filed.
13. May 6 Plaintiffs' Briefs and Record Appendix filed by Francis H. Fox (Bingham, Dana & Gould).

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14. May 11 Supplementary Statement of Agreed Facts filed.

15. May 11 Revised reservation and report filed.

16. June 1 Brief of Intervening Defendants (Coalition for Tax Reform, Inc. and United Peoples, Inc.) by Ernest Winsor of the Mass. Law Reform Institute.

17. June 4 Service of Plaintiffs' Reply Brief by E. Susan Garsh (Bingham, Dana & Gould)

18. June 8 Argued.

19. Sept. 22 Order (Full Court—The Single Justice shall order the entry of an appropriate judgment declaring that the statute is valid and enforceable) as on file.

20. Sept. 28 Motion for entry of judgment filed. (Allowed, Braucher, J.)

21. Sept. 28 Judgment, as on file.

22. Sept. 29 Notice of Appeal by E. Susan Garsh (Bingham, Dana & Gould)

23. Sept. 30 Motion for Stay or Injunction and Expedited Determination by Bingham, Dana & Gould (Francis H. Fox and E. Susan Garsh)

24. Sept. 30 ORDER. Upon consideration by the full court, the plaintiffs' motion for stay or injunction is denied.

25. Oct. 6 U.S. Supreme Court Order denying Application for a Stay.

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26. Feb. 1 See order entered on September 22, 1976. Rescript February 1, 1977. Rescript. Reasons as on file. Notice sent to Counsel.

27. Mar. 1 "See order entered on September 22, 1976" as per rescript on file.

COMMONWEALTH OF MASSACHUSETTS

**SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH**

SUFFOLK COUNTY
No. 76-109 Civ

THE FIRST NATIONAL BANK OF BOSTON,
NEW ENGLAND MERCHANTS NATIONAL BANK,
THE GILLETTE COMPANY,
DIGITAL EQUIPMENT CORPORATION,
and
WYMAN-GORDON COMPANY,
v.
FRANCIS X. BELLOTTI, ATTORNEY GENERAL

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs in the above-entitled suit respectfully represent that:

1. Plaintiff, The First National Bank of Boston, is a national banking association, organized and existing under the laws of the United States with a usual place of business in Boston, Suffolk County, Massachusetts.
2. Plaintiff, New England Merchants National Bank, is a national banking association organized and existing under the laws of the United States with a usual place of business in Boston, Suffolk County, Massachusetts.
3. Plaintiff, Wyman-Gordon Company (hereinafter "Wyman-Gordon"), is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with a usual place of business in Worcester, Worcester County, Massachusetts.
4. Plaintiff, The Gillette Company (hereinafter "Gillette"), is a corporation duly organized and existing under the laws of the State of Delaware with a principal place of business in Boston, Suffolk County, Massachusetts.

5. Plaintiff, Digital Equipment Corporation (hereinafter "Digital"), is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with a principal place of business in Maynard, Middlesex County, Massachusetts.

6. Defendant, Francis X. Bellotti, is the Attorney General of the Commonwealth of Massachusetts.

7. Plaintiffs, The First National Bank of Boston and New England Merchants National Bank, will be referred to hereinafter as "plaintiff Banks."

8. Plaintiff Banks are engaged in Suffolk County in the business of retail, commercial and other forms of banking activities. These include, but are not limited to, maintaining savings and checking accounts for the benefit of both individual and corporate depositors, making loans to individuals and to corporations, acting as trustee for the benefit of beneficiaries designated by their customers, acting as transfer agents for certain publicly held corporations and performing other services normally associated with the banking business.

9. Wyman-Gordon is a business corporation engaged in the business of die forging, utilizing highly sophisticated metal forming techniques. Wyman-Gordon principally serves the aircraft and automotive industries. It has plants in Worcester, Grafton and Millbury, Massachusetts, and employs approximately 1800 persons in Massachusetts.

10. Gillette is a business corporation engaged in the development, manufacture and sale of blades and razors, toiletries and grooming aids, writing instruments and other consumer products and services. It has plants in South Boston and Andover, Massachusetts, and, directly and through subsidiaries, employs approximately 6,000 persons in Massachusetts.

11. Digital is a business corporation engaged in the design, manufacture, sales and servicing of computers, computer systems, peripherals and associated computer acces-

sories and other items and systems using digital techniques. It operates in a highly competitive market from which such major and well-established companies as RCA, General Electric, Singer and Xerox have elected to withdraw within the past five years. Digital has plants or facilities in Acton, Leominster, Marlborough, Maynard, Natick, Northboro, Springfield, Waltham, Westfield, Westminster, West Springfield, and Worcester, Massachusetts, and employs approximately 11,500 persons in Massachusetts.

12. There will be submitted to the voters of Massachusetts in the general election of November 2, 1976, a referendum proposing to amend the Constitution of the Commonwealth to grant to the General Court the power and authority to impose a graduated income tax on personal incomes. A copy of the proposed amendment is appended hereto and marked "A".

13. Plaintiff Banks believe that the graduated personal income tax (and thus the proposed Constitutional Amendment) would adversely affect their business and property in the following ways, among others:

a. it would tend to discourage persons of high ranking executive and middle management ability from settling, remaining or working in Massachusetts, thus depriving the plaintiff Banks of a source of high level executive and middle management talent;

b. it would promote a tax climate which would be considered unfavorable by business corporations, thus tending to discourage businesses from settling or remaining in Massachusetts, with resultant adverse effects on the Banks' industrial loans, deposits, and other services;

c. it would tend to shrink the total individual deposits and the total balance of loans made to individuals; and

d. in various other ways which may be brought out at trial.

14. Plaintiffs Wyman-Gordon and Digital believe that the graduated personal income tax (and thus the proposed

Constitutional Amendment) would adversely affect their business and property in the following ways, among others:

- a. it would tend to discourage persons of high ranking executive and middle management ability from settling, remaining or working in Massachusetts, thus depriving plaintiffs of a source of high level executive and middle management talent;
- b. it would tend to discourage highly skilled and trained, and thus highly paid, engineering and technical specialists from settling, remaining or working in Massachusetts, thus depriving plaintiffs of a source of talent necessary for them to conduct their business; and
- c. in various other ways which may be brought out at trial.

15. Plaintiff Gillette believes that the graduated personal income tax (and thus the proposed Constitutional Amendment) would adversely affect its business and property in the following ways, among others:

- a. it would tend to discourage persons of high ranking executive and middle management ability from settling, remaining or working in Massachusetts, thus depriving plaintiff of a source of high level executive and middle management talent;
- b. it would tend to discourage highly skilled and trained, and thus highly paid, engineering and technical specialists from settling, remaining or working in Massachusetts, thus depriving plaintiff of a source of talent necessary for it to conduct its business;
- c. it would tend to shrink the disposable income of individuals available for the purchase of consumer products; and
- d. in various other ways which may be brought out at trial.

16. Plaintiffs intend to expend moneys to publicize by newspaper advertisements and other similar methods their

contentions with respect to the graduated personal income tax and the proposed Constitutional Amendment in an attempt to persuade the voters of Massachusetts to defeat the proposed Constitutional Amendment at the general election. Plaintiffs, being corporate entities, cannot communicate their contentions without expending some monies.

17. General Laws c. 55, §7, prior to an amendment which became effective on June 20, 1972, provided that no business or banking corporations, such as plaintiffs herein, shall directly or indirectly expend any monies for the purpose of influencing or affecting the vote on any question submitted to the voters, other than with respect to a question materially affecting any of the property, business or assets of the corporation. A copy of the said statute as it existed prior to the 1972 amendment is appended hereto and marked "B".

18. In a prior action, *Lustwerk v. Lytron, Inc.*, 344 Mass. 647, this Court held that a proposed amendment to the Massachusetts Constitution allowing the legislature to impose a proportioned or graduated tax on incomes was a "question submitted to the voters . . . materially affecting any of the property, business or assets of the corporation" within the meaning of General Laws c. 55, §7.

19. By Chapter 458 of the Acts of 1972, effective June 20, 1972, the General Court amended General Laws c. 55, §7, by inserting, after the first sentence of said section, the following sentence:

No question submitted to the voters concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation.

20. In a prior action, *The First National Bank of Boston v. Attorney General*, 362 Mass. 570, two members of this Court held c. 55, §7, as amended, to be unconstitutional and three members of this Court held that the statute did not

prohibit plaintiffs from making expenditures for the purpose of affecting the vote on a referendum question concerning the adoption of a constitutional amendment allowing the legislature to impose a graduated income tax on individuals and corporations.

21. By Chapter 151 of the Acts of 1975, effective April 28, 1975, the General Court has amended General Laws by striking out c. 55 and inserting in its place a new c. 55. Chapter 55, §8, is identical to the predecessor c. 55, §7, as amended, except for the insertion in the second sentence of the word "solely" so that it reads as follows:

No question submitted to the voters solely concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation.

22. Plaintiffs allege that General Laws c. 55, §8, is invalid and unconstitutional both on its face and as applied to plaintiffs, who intend to expend monies to influence the voters, as more particularly set forth in Paragraph 16 herein. The statute violates the First and Fourteenth Amendments to the Constitution of the United States, and various provisions of the Constitution of the Commonwealth, including Articles I, VII, XVI and XIX of the Declaration of Rights, and Article LXXVII of the Articles of Amendment. The said statute is not a reasonable and proper exercise of the police power under Part II, Ch. I, §1, Art. IV of the Constitution of the Commonwealth; it abridges plaintiffs' rights and privileges of freedom of speech and freedom of the press, and their rights of assembly and petition; it denies plaintiffs equal protection of the laws; it imposes arbitrary, unreasonable, discriminatory, vague and indefinite standards and restrictions upon plaintiffs' activities; and it deprives plaintiffs of their liberty and property without due process of law; all as guaranteed by both the Federal and State Constitutions.

23. Plaintiffs have communicated to defendant their beliefs that said statute is invalid and unconstitutional. Defendant, however, contends that the said statute is valid and binding and defendant intends to enforce the same. Should plaintiffs expend monies, as set forth in Paragraph 16 herein, defendant intends to prosecute them and enforce the statute as written. Plaintiffs would therefore act at their peril in carrying out their intentions to expend monies as aforesaid.

24. An actual controversy exists between each of plaintiffs and defendant.

WHEREFORE, plaintiffs respectfully pray:

1. That the Court order a speedy completion of pleadings;
2. That the Court assign the case for an immediate trial;
3. That the Court declare, pursuant to General Laws c. 231A, that General Laws c. 55, §8, is unconstitutional and invalid on its face;
4. That the Court declare, pursuant to General Laws c. 231A, that General Laws c. 55, §8, is unconstitutional as applied to plaintiffs herein;
5. For such other and further relief as the Court may deem meet and proper in the circumstances.

By their attorneys,

/s/FRANCIS H. FOX

FRANCIS H. FOX

/s/JUSTIN P. MORREALE

JUSTIN P. MORREALE

/s/E. SUSAN GARSH

E. SUSAN GARSH

BINGHAM, DANA & GOULD

100 Federal Street

Boston, MA 02110

Tel. No. (617) 357-9300

"A"
THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Seventy-five

PROPOSAL FOR A LEGISLATIVE AMENDMENT TO THE CONSTITUTION AUTHORIZING THE GENERAL COURT TO IMPOSE AND LEVY A GRADUATED TAX ON PERSONAL INCOME AND TO BASE SUCH TAX UPON THE FEDERAL INCOME TAX.

A majority of all the members elected to the Senate and House of Representatives, in joint session, hereby declares it to be expedient to alter the Constitution by the adoption of the following Article of Amendment, to the end that it may become a part of the Constitution [if similarly agreed to in a joint session of the next General Court and approved by the people at the state election next following]:

ARTICLE OF AMENDMENT

ART. . . As an alternative to levying a tax on incomes in the manner provided in Article XLIV of the Amendments to the Constitution, the General Court shall have full power and authority to levy a tax on personal incomes at rates which are graduated according to the total amount of income received, regardless of the sources from which it may be derived, and to grant reasonable exemptions, deductions, credits and abatements to such tax. Further, the General Court may define the tax liability or the total income upon which such tax is levied or the graduated rates at which it is taxed by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time and may prescribe reasonable exceptions to and modifications of such provision.

IN JOINT SESSION, August 15, 1973.

The foregoing legislative amendment of the Constitution is agreed to in joint session of the two houses of the Gen-

eral Court, said amendment having received the affirmative votes of a majority of all the members elected; and it is referred to the next General Court in accordance with a provision of the Constitution.

(s) (Illegible)

Clerk of the Joint Session.

IN JOINT SESSION May 7, 1975

The foregoing legislative amendment is agreed to in joint session of the two houses of the General Court, said amendment having received the affirmative votes of a majority of all the members elected; and this fact is hereby certified to the Secretary of the Commonwealth, in accordance with a provision of the Constitution.

(s) **EDWARD B. O'NEILL**

Clerk of the Joint Session.

SECRETARY OF STATE
May 29 11:12 AM '75

ELECTION DIVISION

QUESTION 2

The proposed amendment would authorize, but not require, the Legislature to modify the personal income tax laws of Massachusetts by the use of graduated rates instead of the present flat or uniform rates. The graduated rates would be based on the total amount of income received, without distinguishing between earned and unearned income. The Legislature would also be authorized to provide for reasonable exemptions, deductions and abatements and could base any such graduated income tax provision on provisions of Federal income tax law.

"B"

C. 55, §7 ANNOTATED LAWS OF MASSACHUSETTS
§7. Political Contributions by Corporations, and Soliciting or Receiving Such Contributions, Penalized.

No corporation carrying on the business of a bank,

trust, surety, indemnity, safe deposit, insurance railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, no company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any country, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, no business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding, promoting or antagonizing the interests of any political party, or influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation. No person or persons, no political committee, and no person acting under the authority of a political committee, or in its behalf, shall solicit or receive from such corporation or such holders of stock any gift, payment, expenditure, contribution or promise to give, pay, expend or contribute for any such purpose.

Any corporation violating any provision of this section shall be punished by a fine of not more than ten thousand dollars, and any officer, director or agent of a corporation violating any provision thereof or authorizing such violation, or any person who violates or in any way knowingly aids or abets the violation of any provision thereof, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than six months. (1907, 576, §22; 1907, 581, §§3, 4; 1908, 483, §§1, 2; 1911, 422; 1912, 229, §§1, 2; 1913, 835, §§353, 356, 496, 499, 503; 1938, 75; 1943, 273, §1; 1946, 537, §10.)

COMMONWEALTH OF MASSACHUSETTS

**SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH**

(Title omitted in printing)

ANSWER

The Attorney General answers the correspondingly numbered paragraphs of the Bill of Complaint as follows:

1-11. The Attorney General admits the allegations contained in paragraphs one through eleven of the Bill of Complaint.

12. The Attorney General denies the allegations in paragraph twelve of the Bill of Complaint. Further answering the Attorney General states that on November 2, 1976 a proposed legislative amendment to the Constitution of the Commonwealth which would grant to the General Court the power to impose a graduated income tax solely on personal incomes will be submitted to the voters of Massachusetts. The defendant admits that the text of the proposed amendment is appended to the Bill of Complaint but further states that only a summary of the amendment will appear on the ballot. A copy of the summary in its current form is appended hereto and marked "A".

13-15. The Attorney General denies the allegations contained in paragraphs thirteen through fifteen of the Bill of Complaint.

16. The Attorney General admits the allegations of the first sentence of paragraph sixteen of the Bill of Complaint but denies the allegations of the remaining sentence of that paragraph.

17-21. The Attorney General admits the allegations contained in paragraphs seventeen through twenty-one of the Bill of Complaint.

22. The Attorney General states that paragraph twenty-two of the Bill of Complaint contains only allegations or

conclusions of law which need not be answered. The Attorney General denies any statement in paragraph twenty-two containing an allegation of material fact.

23. The Attorney General denies the allegations in the first sentence of paragraph twenty-three but admits the allegations of material fact contained in the remaining sentences. Further answering the Attorney General states that he has communicated with counsel of record for the Plaintiffs and been informed of the "beliefs" of the plaintiff corporations and/or the beliefs of their corporate officers.

24. The Attorney General denies the allegations contained in paragraph twenty-four of the Bill of Complaint.

By way of further answer to the Bill of Complaint the Attorney General affirmatively alleges as follows:

25. A declaration that the second sentence of General Laws, c. 55, §8 as amended is unconstitutional on its face or as applied would not fully and finally terminate any actual controversy between the parties.

26. General Laws, c. 55, §8 as most recently amended by St. 1975 c. 151 is neither unconstitutional on its face nor as applied to any of the Plaintiffs herein.

WHEREFORE, the Attorney General respectfully prays:

1. That the Court decline to render a declaratory judgment pursuant to G.L. c. 231A.

2. That the Court, acting pursuant to G.L. c. 231A, declare that G.L. c. 55, §8 as amended by St. 1975, c. 151 is a valid and binding enactment.

3. For such other and further relief as the Court may deem meet and just.

By his attorney,
FRANCIS X. BELLOTTI

by
THOMAS R. KILEY

Assistant Attorney General
McCormack Office Building
Boston, Massachusetts 02108

Dated April 20, 1976

COMMONWEALTH OF MASSACHUSETTS

**SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH**
(Title omitted in printing)

STATEMENT OF AGREED FACTS

Note: Plaintiff The First National Bank of Boston will be referred to herein as "First National"; plaintiff New England Merchants National Bank will be referred to herein as "Merchants"; plaintiff Wyman-Gordon Company will be referred to herein as "Wyman-Gordon"; plaintiff The Gillette Company will be referred to herein as "Gillette"; and plaintiff Digital Equipment Corporation will be referred to herein as "Digital".

1. Plaintiff First National is a national banking association, organized and existing under the laws of the United States with a usual place of business in Boston, Suffolk County, Massachusetts.

2. Plaintiff Merchants is a national banking association, organized and existing under the laws of the United States with a usual place of business in Boston, Suffolk County, Massachusetts.

3. Plaintiff Wyman-Gordon is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with a usual place of business in Worcester, Worcester County, Massachusetts.

4. Plaintiff Gillette is a corporation duly organized and existing under the laws of the State of Delaware with a principal place of business in Boston, Suffolk County, Massachusetts.

5. Plaintiff Digital is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with a principal place of business in Maynard, Middlesex County, Massachusetts.

6. Defendant Francis X. Bellotti is the Attorney General of the Commonwealth.

7. Plaintiff Banks are engaged in the County of Suffolk in the business of retail, commercial and other forms of banking activities. These include, but are not limited to, maintaining savings and checking accounts for the benefit of both individual and corporate depositors, making loans to individuals and to corporations, acting as trustee for the benefit of beneficiaries designated by their customers, acting as transfer agent for certain publicly held corporations and performing other services normally associated with the banking business.

8. Wyman-Gordon is a business corporation engaged in the business of die forging, utilizing highly sophisticated metal forming techniques. Wyman-Gordon principally serves the aircraft and turbine engine industries. It has plants in Worcester, Grafton and Millbury, Massachusetts, and employs approximately 1,700 persons in Massachusetts.

9. Gillette is a business corporation engaged in the development, manufacture and sale of blades, razors, toiletries, grooming aids, writing instruments and other consumer products and service. It has plants in South Boston and Andover, Massachusetts, and employs approximately 6,000 persons in Massachusetts.

10. Digital is a business corporation engaged in the design, manufacture, sales and servicing of computers, computer systems, peripherals and associated computer accessories and other items and systems using digital techniques. It operates in a highly competitive market from which such major and well-established companies as RCA, General Electric, Singer and Xerox have elected to withdraw within the past five years. Digital has plants in Acton, Leominster, Marlborough, Maynard, Natick, Northboro, Springfield, Waltham, Westfield, Westminster, West Springfield, and Worcester, Massachusetts, and employs approximately 11,500 persons in Massachusetts.

11. There will be submitted to the voters of Massachu-

setts in the general election of November 2, 1976, a legislative amendment to the Constitution of the Commonwealth proposing to grant to the General Court the power and authority to impose a graduated income tax on personal incomes. The proposed legislative amendment neither imposes nor requires the imposition of a graduated income tax on individuals and does not purport to authorize the imposition of graduated taxes upon corporate income. A copy of the proposed amendment is appended hereto and marked "A". A copy of the Summary which will appear on the ballot is appended hereto and marked "B".

12. There is a division of opinion among economists as to whether and to what extent a graduated income tax imposed solely on individuals would affect the business and assets of corporations.

13. It is the position of the management of plaintiffs that a graduated income tax (and thus the proposed Constitutional Amendment) would adversely affect their business and property. None of the plaintiffs have communicated with their shareholders on this matter except as is stated in Paragraph 63.

14. It is the position of the management of plaintiff Banks that one way in which the graduated income tax would adversely affect their business and property is by discouraging persons of high ranking executive and middle management ability from settling, remaining, or working in Massachusetts, thus depriving the Banks of a source of high level executive and middle management talent.

15. As of April 13, 1976, there were 550 employees of First National earning \$20,000 or more annually. Of these there are 207 employees earning \$20,000 to \$24,999, 96 employees earning \$25,000 to \$29,999, 137 employees earning \$30,000 to \$59,999 and 10 employees earning \$60,000 to \$191,000.

16. As of April 12, 1976, there were 175 employees of

Merchants earning \$20,000 or more annually. Of these there are 134 employees earning \$20,000 to \$30,000, 33 employees earning \$30,000 to \$40,000 and eight employees earning \$40,000 to \$140,000.

17. It is the position of the management of plaintiff Banks that the graduated income tax would adversely affect their business and property by tending to reduce the total balance of individual checking and savings account deposits. As of April 13, 1976, First National had approximately:

126,000 individual checking accounts with an approximate balance of	\$146,000,000
---	---------------

and

137,000 individual savings accounts with an approximate balance of	\$206,000,000
--	---------------

As of April 12, 1976, Merchants had approximately:

74,000 personal demand deposits with an approximate balance of	\$ 53,500,000
--	---------------

and

83,000 individual savings accounts with an approximate balance of	\$137,700,000
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18. It is the position of the management of plaintiff Banks that the graduated income tax would adversely affect their business and property by producing an adverse effect on the total of individual loans made by the Banks.

19. First National had approximately 209,000 individual loans outstanding with an approximate balance of \$227,139,000, as of April 13, 1976.

20. Merchants had approximately 77,000 personal loans outstanding, with an approximate balance of \$73,000,000, as of April 12, 1976.

21. It is the position of the management of plaintiff Banks that the graduated income tax would adversely affect their business and property by tending to discourage business from settling or remaining in Massachusetts, with resultant adverse effects on the Banks' industrial loans, deposits, and other services.

22. First National had approximately 6,000 industrial and corporate loans outstanding, with an approximate balance of \$1,872,000,000, as of April 13, 1976.

23. Merchants had commercial loans outstanding with an approximate balance of \$569,300,000 as of April 12, 1976.

24. First National had approximately 29,000 industrial and commercial deposits accounts, with an approximate balance of \$897,000,000 as of April 13, 1976.

25. Merchants had approximately 14,000 commercial deposit accounts with an approximate balance of \$358,889,000 as of April 12, 1976.

26. Plaintiff Banks maintain their headquarters in Suffolk County, Massachusetts. They have no branch offices in any other state, or in any Massachusetts county other than Suffolk.

27. In 1972, First National expended or contributed \$3,000 to oppose a proposed amendment to the Massachusetts Constitution which would have authorized the imposition of a graduated income tax.

28. In 1972, Merchants expended or contributed \$3,000 to oppose a proposed amendment to the Massachusetts Constitution which would have authorized the imposition of a graduated income tax.

29. It is the position of the management of Wyman-Gordon that the graduated income tax (and thus the proposed Constitutional Amendment) would adversely affect its business and property in the following ways, among others:

- a. it would tend to discourage persons of high ranking executive ability from settling or remaining in Massachusetts, thus depriving Wyman-Gordon of a source of high level executive talent, and
- b. it would tend to discourage highly skilled and trained, and thus highly paid, engineering and technical specialists from settling in or remaining in Massachusetts, thus depriving Wyman-Gordon of a source of talent necessary for it to conduct its business.

30. Wyman-Gordon's total number of employees at its Massachusetts plants varies through the years, but remains approximately in the 1,700-2,000 range. The total payroll for these employees annualized from April 13, 1976, is approximately \$27,000,000.

31. As of April 13, 1976, there were presently 206 employees of Wyman-Gordon earning \$20,000 or more. Of these there were 133 junior executives and technicians earning \$20,000 to \$25,000, 36 executive and technical personnel earning \$25,000 to \$30,000, and 37 executives earning \$30,000 or more. The highest salary paid is \$130,000.

32. In 1972, Wyman-Gordon expended or contributed \$3,000 to oppose a proposed amendment to the Massachusetts Constitution which would have authorized the imposition of a graduated income tax.

33. It is the position of the management of Gillette that the graduated income tax (and thus the proposed Constitutional Amendment) would adversely affect its business and property by tending to discourage persons of high ranking executive and middle management ability from settling or remaining in Massachusetts, thus depriving Gillette of a source of high level executive and middle management talent, and by tending to shrink disposable income of individuals available for the purchase of consumer products.

34. Gillette's total number of Massachusetts employees

is approximately 6,000 and the total annual payroll for these employees was approximately \$73,800,000 in calendar year 1974, out of a total United States payroll of \$108,200,000.

35. As of April 16, 1976, there were 857 employees at Gillette earning \$20,000 or more. Of these there are 574 employees earning \$20,000 to \$30,000, 226 employees earning \$30,000 to \$50,000, and 57 employees earning more than \$50,000.

36. Gillette's net sales in Massachusetts during the calendar year 1974 were \$39,600,000, as against total net sales of \$517,700,000 in the United States for the same period.

37. Gillette owned tangible property in Massachusetts worth \$30,000,000 in 1974 and leasehold improvements in Massachusetts worth \$1,500,000 in calendar year 1974.

38. In 1972 Gillette expended or contributed \$3,000 to oppose a proposed amendment to the Massachusetts Constitution which would have authorized the imposition of a graduated income tax.

39. It is the position of the management of Digital that the graduated income tax (and thus the proposed Constitutional Amendment) would adversely affect its business and property in the following ways, among others:

- a. it would impair Digital's ability to attract executive, technical and other skilled professional people to Massachusetts, and
- b. the number of Massachusetts-based employees wishing to relocate to Digital facilities in New Hampshire, Arizona and elsewhere would increase.

40. Digital's total number of Massachusetts employees as of April 15, 1976, was 11,500. The total annual payroll for these employees for calendar year 1975 was approximately \$131,000,000.

41. As of April 15, 1976, there were 1,207 employees at

Digital earning \$20,000 or more. Of these there were 1,054 employees earning between \$20,000 and \$30,000, 142 employees earning between \$30,000 and \$50,000, and 11 employees earning over \$50,000.

42. Digital's net sales of products and services to customers in Massachusetts for calendar 1975 was \$27,300,000.

43. In 1972, Digital expended or contributed no monies to oppose a proposed amendment to the Massachusetts Constitution which would have authorized the imposition of a graduated income tax.

44. Plaintiffs intended to expend monies to publicize by paid advertisements in newspapers and other media their contentions with respect to the graduated income tax and the proposed Constitutional Amendment in an attempt to persuade the voters of Massachusetts to defeat the proposed Constitutional Amendment at the general election.

45. First National desires to, and but for G.L. c. 55 §8 would, place messages in its own in-house monthly newspaper called *About the First*. The purpose of such messages would be to attempt to persuade its own employees to vote against the proposed Constitutional Amendment. This publication is printed by First National solely for its own employees and is mailed to approximately 5,300 employees at their home addresses. Space in the said newspaper is a thing of some value, and it costs money to publish this paper. However, First National has not and will not place such messages in the paper out of respect for the law and for fear of criminal prosecution for violation of the statute. The Attorney General has not indicated that he will prosecute First National for placing such messages in its own in-house newspaper.

46. First National employs four professional economists who frequently comment publicly on economic conditions in Massachusetts, and would, but for G.L. c. 55 §8, comment publicly on the effect a graduated income tax would

have on the Massachusetts economy. The Attorney General has not indicated that he will prosecute First National or the professional economists if the professional economists make such public comments.

47. Wyman-Gordon desires to, and but for G.L. c. 55 §8 would, express its views on the proposed Constitutional Amendment in its internal newsletter "Information for Management" distributed to 275 monthly-paid employees. It costs money to print this newsletter, and Wyman-Gordon has not and will not express its views on this matter in said newsletter out of respect for the law and for fear of criminal prosecution for violation of the statute. The Attorney General has not indicated that he will prosecute Wyman-Gordon for placing such messages in its own in-house newsletter.

48. Gillette desires to, and but for G.L. c. 55, §8 would, express its views on the proposed Constitutional Amendment to its employees through its "Gillette Company Newsletter" and other internal bulletins. It costs money to print and deliver these publications, and Gillette will not express its views on this matter in said publications out of respect for the law and for fear of criminal prosecution for violation of the statute. The Attorney General has not indicated that he will prosecute Gillette for placing such messages in its own internal publications.

49. Digital desires to, and but for G.L. c. 55 §8 would, express its views on the proposed Constitutional Amendment to its employees through "Digital This Week", an internal newsletter distributed weekly to employees, and through "On Line", a quarterly magazine mailed to employees at their home addresses. It costs money to print and distribute these publications, and Digital will not express its views on this matter in said publications out of respect for the law and for fear of criminal prosecution for violation of the statute. The Attorney General has not

indicated that he will prosecute Digital for placing such messages in its own internal publications.

50. There is appended hereto a two-page document marked "C". The said document lists certain Real Estate Investment Trusts which are organized under the laws of Massachusetts, and sets forth certain financial and other information concerning these trusts.

51. The total assets of the Real Estate Investment Trusts shown on Exhibit "C" are approximately \$5,458,901,000.

52. The total "Gross Income" for the said trusts is approximately \$402,829,000. This is an annual gross income figure which reflects the latest reported accounting of the varied fiscal years of each of the REITS on the list.

53. There are many other business trusts organized under the laws of Massachusetts, although no income or asset statistics on said business trusts are readily available to the parties. The Massachusetts Secretary of State's records show 7,500 Massachusetts business trusts have filed reports in accordance with G.L. c. 182 §2 as of April 1, 1976.

54. During 1972, the most recent year for which income statistics are available, the Statistical Abstract of the United States shows that there are 15,000 Massachusetts partnerships which earned a total of \$1,816,000,000 in business receipts.

55. The Department of Labor and Industries, *Directories of Labor Organizations in Massachusetts* (1975) lists 2,250 individual local labor organizations in the state with a membership of 590,625.

56. In a joint session of the two branches held July 2, 1969, the General Court approved a proposed amendment to the Massachusetts Constitution which purported to

authorize the imposition of a graduated income tax. The proposed amendment received two hundred four (204) votes in the affirmative and forty-nine (49) in the negative.

57. In a joint session of the two branches held May 12, 1971, the General Court approved a proposed amendment to the Massachusetts Constitution which purported to authorize the imposition of a graduated income tax. The proposed amendment received two hundred forty-five (245) votes in the affirmative and twenty (20) in the negative.

58. On November 7, 1972, the proposed amendment to the Massachusetts Constitution which purported to authorize the imposition of a graduated income tax was submitted to the voters of the Commonwealth at the Biennial State Election. A total of two million five hundred three thousand four hundred ninety-four (2,503,494) ballots were cast at that election. Three hundred thirty-five thousand eight hundred twenty-five (335,825) blank ballots were recorded on the graduated income tax amendment. The proposed amendment was rejected by the voters. It received one million four hundred fifty-five thousand six hundred thirty-nine (1,455,639) votes in the negative and seven hundred twelve thousand and thirty (712,030) votes in the affirmative.

59. On June 6, 1972, the Committee for Jobs and Government Economy was organized as a non-elected political committee with a purpose of supporting or opposing tax proposals which would influence the state's economy. The Committee for Jobs and Government Economy raised and expended approximately one hundred twenty thousand dollars (\$120,000) in opposition to the proposed graduated income tax amendment as indicated in copies of the financial reports filed by the Committee which are appended hereto and marked "D". The Committee for Jobs and

Government Economy was the only duly organized non-elected political committee to raise and expend money to oppose the proposed amendment.

60. On September 22, 1972, the Coalition for Tax Reform, Inc., was organized as a non-elected political committee with the stated purpose of promoting passage of the proposed graduated income tax amendment. The Coalition for Tax Reform, Inc., raised and expended approximately seven thousand dollars (\$7,000) to promote the proposed amendment, as indicated in copies of the financial reports filed by the Coalition which are appended hereto and marked "E". The Coalition for Tax Reform, Inc., was the only duly organized political committee to raise and expend money to promote the proposed amendment.

61. Forty-one (41) states and the District of Columbia impose income taxes on personal income. Thirty-six (36) states and the District of Columbia have graduated income taxes.

62. The boards of directors of all of the plaintiff corporations were notified of the commencement of this action. The boards of directors of three of the plaintiffs formally ratified the commencement of the action.

63. At the annual meeting of stockholders of First National Boston Corporation, which is the parent of the plaintiff First National, held on March 18, 1976, in response to a question on the proposed graduated state income tax, the management of First National responded, in part, that as presently proposed, its economists feel that a graduated tax would affect the entire middle-management group and that it was already hard enough to keep businesses from moving out of the state. The question and response were reprinted in the Questions & Answers section of the Summary Report of the Annual Meeting, which was mailed to all shareholders.

The parties have agreed that the facts recited in the Statement of Agreed Facts are true. Plaintiffs and the defendant do not necessarily agree with each other as to the relevance of each fact. Plaintiffs and the defendant each reserve the right to argue as to the relevance, or lack of relevance, of any particular fact set forth herein.

/s/FRANCIS H. FOX

FRANCIS H. FOX

BINGHAM, DANA & GOULD

Attorneys for the Plaintiffs

FRANCIS X. BELLOTTI

Attorney General

By THOMAS R. KILEY

THOMAS R. KILEY

Assistant Attorney General

"A"**THE COMMONWEALTH OF MASSACHUSETTS****In the Year One Thousand Nine Hundred and Seventy-five****PROPOSAL FOR A LEGISLATIVE AMENDMENT TO THE CONSTITUTION AUTHORIZING THE GENERAL COURT TO IMPOSE AND LEVY A GRADUATED TAX ON PERSONAL INCOME AND TO BASE SUCH TAX UPON THE FEDERAL INCOME TAX.**

A majority of all the members elected to the Senate and House of Representatives, in joint session, hereby declares it to be expedient to alter the Constitution by the adoption of the following Article of Amendment, to the end that it may become a part of the Constitution [if similarly agreed to in a joint session of the next General Court and approved by the people at the state election next following]:

ARTICLE OF AMENDMENT

ART. . . As an alternative to levying a tax on incomes in the manner provided in Article XLIV of the Amendments to the Constitution, the General Court shall have full power and authority to levy a tax on personal incomes at rates which are graduated according to the total amount of income received, regardless of the sources from which it may be derived, and to grant reasonable exemptions, deductions, credits and abatements to such tax. Further, the General Court may define the tax liability or the total income upon which such tax is levied or the graduated rates at which it is taxed by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time and may prescribe reasonable exceptions to and modifications of such provision.

IN JOINT SESSION, August 15, 1973.

The foregoing legislative amendment of the Constitution

is agreed to in joint session of the two houses of the General Court, said amendment having received the affirmative votes of a majority of all the members elected; and it is referred to the next General Court in accordance with a provision of the Constitution.

(s) (Illegible)

Clerk of the Joint Session.

IN JOINT SESSION, May 7, 1975

The foregoing legislative amendment is agreed to in joint session of the two houses of the General Court, said amendment having received the affirmative votes of a majority of all the members elected; and this fact is hereby certified to the Secretary of the Commonwealth, in accordance with a provision of the Constitution.

(s) **EDWARD B. O'NEILL**

Clerk of the Joint Session.

SECRETARY OF STATE

May 29 11:12 AM '75

ELECTION DIVISION

"B"**QUESTION 2**

The proposed amendment would authorize, but not require, the Legislature to modify the personal income tax laws of Massachusetts by the use of graduated rates instead of the present flat or uniform rates. The graduated rates would be based on the total amount of income received, without distinguishing between earned and unearned income. The Legislature would also be authorized to provide for reasonable exemptions, deductions and abatements and could base any such graduated income tax provision on provisions of Federal income tax law.

"0"

20 LARGEST REAL ESTATE INVESTMENT TRUSTS - MASS.*

	Name	Fiscal Year	Total Assets	Gross Income
1.	Chase Manhattan Mortgage & Realty Trust, Boston	1975	\$940,643,000.	\$38,079,000.**
2.	Continental Mortgage Investors, Boston	1975	\$729,050,000.	\$58,225,000.
3.	Connecticut General Mortgage and Realty Inc., Springfield	1975	\$442,000,000.	\$41,361,000.
4.	Diversified Mortgage Investors, Boston	1975	\$373,984,000.	\$28,816,000.
5.	Equitable Life Mortgage & Realty Investors, Boston	1975	\$358,961,000.	\$32,555,000.
6.	C.I. Mortgage Group, Boston	1975	\$324,735,000.	\$20,602,000.
7.	Massmutual Mortgage & Realty Inv., Springfield	1975	\$231,038,000.	\$18,604,000.
8.	North American Mortgage Investors, Boston	1975	\$212,478,000.	\$20,939,000.
9.	Cabot, Cabot & Forbes Land Trust, Boston	1975	\$206,169,000.	\$13,846,000.
10.	Security Mortgage Investors, Boston	1975	\$205,029,000.	\$11,621,000.
11.	First Pennsylvania Mortgage Trust, Boston	1975	\$188,758,000.	\$ 9,702,000.
12.	Institutional Investors Trust, Boston	1975	\$186,468,000.	\$11,951,000.
13.	C. I. Realty Investors	1975	\$185,768,000.	\$30,514,000.
14.	BT Mortgage Investors	1975	\$170,316,000.	\$ 9,889,000.
15.	Gulf Mortgage & Realty Inv., Boston	1975	\$150,540,000.	\$11,023,000.
16.	State Mutual Inv., Worcester	1975	\$137,914,000.	\$ 9,696,000.
17.	Barnes Mortgage Investment Trust, Boston	1975	\$118,153,000.	\$ 7,464,000.
18.	American Fletcher Mortgage Inv., Boston	1974	\$114,473,000.	\$ 7,617,000.
19.	Hubbard Real Estate Investment, Boston	1975	\$ 94,993,000.	\$ 8,784,000.
20.	TMC Mortgage Investors, Boston	1974	\$ 87,431,000.	\$11,541,000.

* American Banker, Vol. CXL No. 191, Oct. 2, 1975

** Figures supplied by National Association of Real Estate Investment Trusts, 1101 Seventeenth St., N.W. Washington, D.C. 20036

[In designating the appendix the parties have been guided by Supreme Court Rule 36(2) and the admonition of the Court to designate only the most significant portions of the record. The parties have omitted, for instance, attachments D and E to the Statement of Agreed Facts which are referred to in paragraphs 59 and 60 thereof and which consist of copies of the campaign finance reports of committees organized to favor and oppose a 1972 Massachusetts ballot question proposing a graduated income tax. Those reports appear at pages A-47 through A-113 of the Record Appendix submitted to the Supreme Judicial Court.]

[It is agreed by the parties, with reference to paragraphs 59 and 60 of the Statement of Agreed Facts, that the documents set forth herein as exhibits "A" and "B" were submitted to the Supreme Judicial Court as an appendix to the brief of two intervening defendants (Coalition for Tax Reform, Inc. and United Peoples, Inc.), which two entities are no longer parties to this case.]

"EXHIBIT A"

MASSACHUSETTS LAW REFORM INSTITUTE
 2 PARK SQUARE
 BOSTON, MASSACHUSETTS 02110
 AREA CODE 617
 482-0890

May 10, 1976

Mr. Peter F. Rousmaniere

242 Clark Road
 Brookline, Massachusetts 02146

Re: *GIT finances, 1972*

Dear Peter:

I need your help right away in finding out (1) what was received, (2) what was expended and (3) what of these was, if anything, not reported to the Secretary of State by Coalition for Tax Reform with respect to the 1972 GIT campaign.

Enclosed herewith are copies of pages A-41 and A-42 of the record appendix in the *First National Bank* (II) case, wherein the corporations (again) seek to have invalidated the election law provision prohibiting corporate contributions to the GIT campaign. The relevant paragraphs 59 and 60 of the statement of facts agreed to by the plaintiffs and the AG, state that CTR spent only approximately \$7,000 on the campaign.

But I thought the true figure was closer to \$15,000!

Enclosed also are copies of pages A-85 through A-113 (less duplications and blank pages) which purport to be the back-up for the conclusion that CTR spent only \$7,000.

Please examine this material, whatever records you have and, if necessary, whatever records others (Julie Perkins of LWV; Cathy Keefe of Common Cause/Mass..)

may have and tell me quickly the answers to these questions:

1. What did CTR *receive* with respect to the 1972 campaign?
2. What did CTR *spend* with respect to the 1972 campaign?
3. What are the details supporting your answers *not* accounted for in the copies enclosed of S/S records?

Since CTR will probably be granted conditional intervenor status in this case (i.e., we may be able to add a little to the stipulation of "facts" and we will be able to brief and argue the case), we cannot allow the case to be submitted to the court on false facts.

This is important. Please call me right away.

Sincerely yours,
 ERNEST WINSOR

EW:fl

Enclosures

xe with enclosures: DIANE KESSLER, MCC
 JULIE PERKINS AND FLORENCE RUBIN,
 LWV
 CATHRYN KEEFE, *Common Cause/Mass.*
 BARBARA A. SMITH

"EXHIBIT B"

Peter F. Rousmaniere
 242 Clark Rd.
 Brookline, Mass. 02146
 May 20, 1976

Mr. Ernest Winsor,
 Massachusetts Law Reform Institute,
 2 Park Sq.,
 Boston, Mass. 02116

Dear Tony,

I have received and reviewed your letter dated May 10, 1976. I have examined the pertinent documents, and although my examination is not complete, I believe that the information I submit to you in this letter is reliable.

All receipts and disbursements of the Coalition for Tax Reform, Inc., between August, 1971, and August, 1973, were handled through a checking account at the National Shawmut Bank, acct. #046-876-2. These receipts and disbursements summarize the Coalition's financial operations with respect to the graduated income tax campaign and, to a limited degree, its on-going activities in the area of tax reform.

Receipt of funds for the 1972 campaign.

I have included a table which identifies the date and amount of bank deposits, the recognition or non-recognition of the deposit in statements filed by me with the Secretary of State, and the amount of understatement of deposits if any.

It is clear that the photocopied statements filed with the Secretary of State which you provided me significantly underestimate actual deposits. Also, statements as you provided them to me are not available for some periods in 1972 and all periods in 1973.

At the present time, I cannot determine why actual deposits were not reported in a timely fashion to the Secretary of State. I wish to note that, at the time, considerable confusion existed within the Secretary of State's office regarding the guidelines for filing of such statements.

Disbursement of funds for the 1972 campaign.

I have included a table which identifies by period disbursements the recognition or non recognition of the disbursements in statements filed by me with the Secretary of State, and the amount of understatement of disbursements if any.

As in the case of receipts, I cannot determine at the present time the cause of the discrepancies.

Yours very truly,
 PETER F. ROUSMANIERE

EXAMINATION OF RECEIPT OF FUNDS BY THE COALITION FOR TAX REFORM, INC.

<i>Date of Deposit</i>	<i>Amount per Bank</i>	<i>S/S Statement</i>	<i>Amount per Statement</i>	<i>Understatement</i>
various dates pre 9/7/72	3,968.25	On or before 9/15/72	3,956.25	12.00
9/13/72	459.00	"	none	459.00
10/16/72	1,947.50	10/1 - 10/20/72	1,942.50	5.00
10/31/72	5,313.00	10/20 - 11/ 5/72	none	5,313.00
11/28/72	563.00	11/15 - 11/30/72	563.00	—
various dates 1/5/73 - 8/31/73	2,276.00	no statements	none	2,276.00
TOTALS:	14,526.75		6,461.75	8,065.00

EXAMINATION OR DISBURSEMENT OF FUNDS BY THE COALITION FOR TAX REFORM, INC.

<i>Period of Disbursement</i>	<i>Amount per Bank</i>	<i>S/S Statement</i>	<i>Amount per Statement</i>	<i>(Over) - under- statement</i>
on or before 9/15/72	2,508.42	on or before 9/15/72	3,328.91	(820.49)
9/16 - 9/30	none	9/16 - 9/30	795.35	(795.35)
10/1 - 10/20	1,149.16	10/1 - 10/20	362.05	787.11
10/21 - 11/05	2,634.02	10/21 - 11/05	none	2,634.02
Jan. Aug., 1973	8,216.11	no statements	none	8,216.11
TOTALS	14,507.71		4,486.31	100,211.40

* Checks cleared and bank charges.